

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

ANDREW MILLER,

Petitioner,

v.

CIVIL ACTION NO. 5:17-cv-04159

RALEPH TERRY, *Acting Warden,
Mount Olive Correctional Complex,*

Respondent.

MEMORANDUM OPINION AND ORDER

On October 13, 2017, the Petition, proceeding *pro se*, filed his Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Document 1). On March 6, 2018, the *Respondent's Motion to Dismiss or for Judgment Against the Petitioner on the Merits* (Document 12) was filed. By *Standing Order* (Document 3) entered on October 16, 2017, this action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On December 7, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 18) wherein it is recommended that this Court grant the *Respondent's Motion to Dismiss or for Judgment Against the Petitioner on the Merits* (Document 12), deny the Petitioner's Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Document 1), dismiss this case with prejudice, and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by December 24, 2018.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *Respondent's Motion to Dismiss or for Judgment Against the Petitioner on the Merits* (Document 12) be **GRANTED**, the Petitioner's Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Document 1) be **DENIED**, this case be **DISMISSED with prejudice**, and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented party.

ENTER: January 3, 2019


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA